

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

DANCO, INC.,

Plaintiff,

v.

FLUIDMASTER, INC.,

Defendant.

Civil Action No.: 5:16-CV-00073-JRG-CMC

JOINT CLAIM CONSTRUCTION CHART

In accordance with the Fifth Amended Agreed Docket Control Order [Docket Entry # 91] and P.R. 4-5(d) the parties hereby submit their Joint Claim Chart for asserted U.S. Patent Nos. 8.943,620 (“the ‘620 Patent”) and 9.181,687 (“the ‘687 Patent”). Attached hereto as Exhibit A is a chart of the claim terms and phrases proposed for construction by Defendant Fluidmaster, Inc. and on which the parties agree. Attached hereto as Exhibit B is a chart of the claim terms and phrases proposed for construction by both parties and on which the parties disagree. Attached hereto as Exhibit C is a chart of the claim terms and phrases proposed for construction by Defendant Fluidmaster, Inc. and on which the parties disagree. Attached hereto as Exhibit D is a chart listing the complete language of disputed claims with disputed claim terms and phrases in bold type.

Danco objects to Fluidmaster’s indefiniteness contentions in Exhibits B and C for the following terms or phrases, which contentions were not timely disclosed in Fluidmaster’s March 28, 2017 P.R. 3-3 Invalidity Contentions:

‘620 Patent

1. “detachably attached”

2. “rotatably coupled”

‘687 Patent

1. “adapter”
2. “second end”

Danco further objects to Fluidmaster’s indefiniteness contentions in Exhibits B and C for the following terms or phrases, which contentions were neither timely disclosed in Fluidmaster’s March 28, 2017 P.R. Invalidity Contentions nor disclosed in Fluidmaster’s May 19, 2017 P.R. 4-2 “Preliminary Claim Constructions and Extrinsic Evidence” disclosure:

1. “adaptor”
2. “flush opening”
3. “a flush opening configured to mate to a basket structure of a dual flush canister for a toilet”;
4. “first end”
5. “the first end being configured to couple to a dual flush canister”;
6. “tab(s)”
7. “tabs extending inward”
8. “the plurality of tabs being configured to engage a lip of a flush opening of a flush valve previously installed in the toilet”;
9. “adaptor flush opening of a flush valve adaptor”;
10. “circular support structure”; and
11. “a circular support structure configured to align the dual flush canister with the dual flush opening.”

Fluidmaster objects to the following alternative constructions in Exhibits B and C offered by Danco, as they were not included in Danco's Exchange of Preliminary Claim Constructions and Extrinsic Evidence under P.R. 4-2, or the parties' Joint Claim Construction and Prehearing Statement under P.R. 4-3.:

'620 Patent

1. "Gasket": "a rubber ring, for placing around a joint to make it watertight."
2. "Adaptor": "a connector for joining parts."
3. "Rotatably Coupled": "joined to allow rotation"
4. "Actuator": "mechanism to start a process"

'687 Patent

1. "Adapter": "a connector for joining parts."
2. "Basket structure": "basket-shaped structure"
3. "Second End": "the latter of two extremities."

Respectfully submitted, this 14th day of August, 2017, by:

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EXHIBIT A – JOINT CLAIM CONSTRUCTION CHART

TERMS/PHRASES PROPOSED FOR CONSTRUCTION BY FLUIDMASTER UPON WHICH THE PARTIES AGREE

U.S. Patent No. 8,943,620				
<u>Claim term, phrase or clause</u>	<u>Claim(s)</u>	<u>Danco's Proposed Construction</u>	<u>Fluidmaster's Proposed Construction</u>	<u>Court's Construction</u>
“flush mechanism”	1, 2, 4, 11	[AGREED]	[AGREED]	Plain meaning.
“predefined flush capability”	1, 2	[AGREED]	[AGREED]	Plain meaning.
“between”	1, 21	[AGREED]	[AGREED]	Plain meaning.
“flush orifice”	1, 20, 21	[AGREED]	[AGREED]	Plain meaning.
“sealing member”	1, 21	[AGREED]	[AGREED]	Plain meaning.
“seat a sealing member”	1	[AGREED]	[AGREED]	Plain meaning.
“in contact with the flush orifice”	21	[AGREED]	[AGREED]	Plain meaning.

U.S. Patent No. 9,181,687				
<u>Claim term, phrase or clause</u>	<u>Claim(s)</u>	<u>Danco's Proposed Construction</u>	<u>Fluidmaster's Proposed Construction</u>	<u>Court's Construction</u>
“flush valve opening”	14	[AGREED]	[AGREED]	Plain meaning.
“sealing material”	14, 15	[AGREED]	[AGREED]	Plain meaning.
“lip”	4, 14	[AGREED]	[AGREED]	Plain meaning.
“engage a lip”	4	[AGREED]	[AGREED]	Plain meaning.
“support legs”	4, 14, 20	[AGREED]	[AGREED]	Plain meaning.
“mating ears”	7, 17	[AGREED]	[AGREED]	Plain meaning.
“annular groove”	7, 17	[AGREED]	[AGREED]	Plain meaning.
“extending between”	4, 14, 20	[AGREED]	[AGREED]	Plain meaning.

EXHIBIT B – JOINT CLAIM CONSTRUCTION CHART

TERMS/PHRASES FOR WHICH BOTH PARTIES SEEK CONSRUCTION AND UPON WHICH THE PARTIES DISAGREE

U.S. Patent No. 8,943,620 and U.S. Patent No. 9,181,687				
<u>Claim term, phrase or clause</u>	Claims	Danco's Proposed Construction	Fluidmaster's Proposed Construction	<u>Court's Construction</u>
“detachably attached”	<u>‘620 Patent</u> 1, 4	“removably retained”	Indefinite. Or , if construed, “designed for direct separation and direct reattachment without degradation (referring to gasket)”	
“flush valve”	<u>‘620 Patent</u> 1, 21	“a valve located at the bottom of a toilet tank used to discharge water from the toilet tank to a toilet bowl”	“valve which uses a sealing member to ensure water does not leak into the toilet bowl until a flush is initiated”	
	<u>‘687 Patent</u> 4, 14			
“dual flush canister”	<u>‘620 Patent</u> 11, 12, 21, 22	“cylindrical-shaped device providing for two flush volumes”	“a dual flush mechanism having at least a partially cylindrical shape”	
	<u>‘687 Patent</u> 4, 7, 9, 14, 17, 19, 20			

EXHIBIT C – JOINT CLAIM CONSTRUCTION CHART

TERMS/PHRASES FOR WHICH FLUIDMASTER SEEKS CONSRUCTION AND UPON WHICH THE PARTIES DISAGREE

U.S. Patent No. 8,943,620				
<u>Claim term, phrase or clause</u>	Claims	Danco's Proposed Construction	Fluidmaster's Proposed Construction	<u>Court's Construction</u>
“gasket”	1, 4, 21	Needs no construction; plain meaning. (“a rubber ring, for placing around a joint to make it watertight”)	“a non-adhesive object that creates a fluid seal which is maintained by compressive resilience”	
“adaptor”	4, 11, 12, 21	Needs no construction; plain and ordinary meaning. (“a connector for joining parts”)	Indefinite. Or , if construed: “any of various devices used in adjusting or fitting to each other the separate parts of a machine or apparatus whose design is such that adjustment or fitting would otherwise not be possible (as two pipes of different diameters)”	
“rotatably coupled”	12	Needs no construction; plain meaning. (“joined to allow rotation”)	Indefinite. Or , if construed: “coupled through rotation”	
“actuator”	22	Not indefinite. Needs no construction; plain meaning. (“mechanism to start a process”)	Indefinite. Or, if construed: “part or assembly which causes movement”	

U.S. Patent No. 9,181,687				
<u>Claim term, phrase or clause</u>	Claims	Danco's Proposed Construction	Fluidmaster's Proposed Construction	<u>Court's Construction</u>
“adapter”	14	Needs no construction; plain meaning. (“a connector for joining parts”)	Indefinite. Or , if construed: “any of various devices used in adjusting or fitting to each other the separate parts of a machine or apparatus whose design is such that adjustment or fitting would otherwise not be possible (as two pipes of different diameters)”	
“flush opening”	4	Needs no construction; plain meaning.	Orifice of a flush valve.	
“flush opening”, <i>see:</i> “a flush opening configured to mate to a basket structure of a dual flush canister for a toilet” (claim 1) / “adapter flush opening of a flush valve adapter” (claim 14) / “flush opening” (claim 16)	14	Not a “means-plus-function” claim. Needs no construction; plain meaning.	Governed by 35 U.S.C. § 112, ¶ 6 and limited to structure or its equivalents, identified below. <u>Function:</u> mate to a basket structure of a dual flush canister for a toilet <u>Structure:</u> “upper flange and ear structure of adapter fittings 603, 604 via gasket 606”	

“flush opening”	20	Needs no construction; plain meaning.	Indefinite.	
“basket structure”	4, 9, 13, 14, 19, 20	Needs no construction; plain meaning. (“basket-shaped structure”)	“a spacer having two parallel rings vertically separated by connecting members, the lower ring having a horizontal orientation (<i>e.g.</i> , a floor)”	
“first end”, <i>see</i>: “the first end being configured to couple to a dual flush canister” (claims 4, 14, 20)	4, 7, 14, 17, 20	Not a “means-plus-function” claim. Needs no construction; plain meaning.	Governed by 35 U.S.C. § 112, ¶ 6 and limited to structure or its equivalents, identified below. <u>Function</u> : couple to a dual flush canister <u>Structure</u> : “top ring of adapter 133 having internal slots 233 and internal annular groove 236”	
“second end”	4, 13, 14, 20	Needs no construction; plain meaning. (“the latter of two extremities”)	Indefinite. Or , if construed, “the lower ring having a horizontal orientation (<i>e.g.</i> , floor) of the basket structure”	

<p>“tabs”, <i>see</i>:</p> <p>“tabs extending inward” (claim 4, 14) / “the plurality of tabs being configured to engage a lip of a flush opening of a flush valve previously installed in the toilet” (claim 4)</p>	<p>4, 14</p>	<p>Not a “means-plus-function” claim.</p> <p>Needs no construction; plain meaning.</p>	<p>Governed by 35 U.S.C. § 112, ¶ 6 and limited to structure or its equivalents, identified below.</p> <p><u>Function</u>: engage a lip of a flush opening of a flush valve previously installed in the toilet.</p> <p><u>Structure</u>: “tabs of the clamping arms 913/933”</p>	
<p>“circular support structure”, <i>see</i>:</p> <p>“a circular support structure configured to align the dual flush canister” (claim 20)</p>	<p>20, 21</p>	<p>Not a “means-plus-function” claim.</p> <p>Needs no construction; plain meaning.</p>	<p>Governed by 35 U.S.C. § 112, ¶ 6, but inadequate corresponding structure disclosed, so Indefinite.</p> <p>Or, if construed pursuant to 35 U.S.C. § 112, ¶ 6, limited to structure or its equivalents, identified below.</p> <p><u>Function</u>: Align the dual flush canister with the flush opening</p> <p><u>Structure</u>: “clamp 136, or sleeve adapter 180”</p>	

EXHIBIT D – JOINT CLAIM CONSTRUCTION CHART

COMPLETE LANGUAGE OF DISPUTED CLAIMS

U.S. Patent No. 8,943,620	
Claim	Complete Language of Disputed Claims With Disputed Terms in Bold
1	An apparatus, comprising: a flush mechanism configured to provide for a predefined flush capability in a toilet; and a <i>gasket detachably attached</i> to the flush mechanism, the gasket forming a seal between the flush mechanism and a flush orifice of a flush valve, the seal being maintained during a full flush of the toilet by the flush mechanism, where the <i>flush valve</i> is configured to seat a sealing member.
4	The apparatus of claim 2, wherein the dual flush mechanism further comprises an <i>adaptor</i> configured to <i>detachably attach</i> to the dual flush mechanism, where the <i>gasket</i> is attached to the <i>adaptor</i> .
11	The apparatus of claim 4, wherein the dual flush mechanism further comprises a <i>dual flush canister</i> coupled to the <i>adaptor</i> .
12	The apparatus of claim 11, wherein the <i>dual flush canister</i> is <i>rotatably coupled</i> to the <i>adaptor</i> .
14	The apparatus of claim 13, wherein the <i>gasket</i> includes a pseudo I-beam structure extending around at least a portion of an edge of the second opening.
21	A method, comprising the steps of: removing a sealing member from a <i>flush valve</i> in a toilet, the <i>flush valve</i> including a flush orifice that is sealed by the sealing member; positioning an <i>adaptor</i> having a <i>gasket</i> over the flush orifice of the <i>flush valve</i> so that the <i>gasket</i> comes into contact with the flush orifice, thereby creating a seal between the <i>adaptor</i> and the flush orifice; and attaching a <i>dual flush canister</i> to the <i>adaptor</i> with the <i>gasket</i> in contact with the flush orifice, the <i>dual flush canister</i> providing for a dual flush capability.
22	The method of claim 21, further comprising the step of installing an <i>actuator</i> that triggers an operation of the <i>dual flush canister</i> .

U.S. Patent No. 9,181,687	
Claim	Complete Language of Disputed Claims With Disputed Terms in Bold
4	<p>An apparatus, comprising:</p> <p>a basket structure having a first end and a second end, the first end being configured to couple to a dual flush canister for a toilet, the dual flush canister being configured to provide both a short flush and a long flush of the toilet;</p> <p>a plurality of tabs extending inward toward a center axis of the basket structure, the plurality of tabs being configured to engage a lip of a flush opening of a flush valve previously installed in the toilet; and</p> <p>a plurality of support legs extending between the first end and the second end defining a plurality of passageways from an exterior of the basket structure to the flush opening.</p>
7	The apparatus of claim 4, wherein the first end is coupled to the dual flush canister via a plurality of mating ears fitting within an annular groove.
9	The apparatus of claim 4, wherein the dual flush canister can be rotated with respect to the basket structure .
13	The apparatus of claim 4, wherein the plurality of tabs are positioned at the second end of the basket structure .
14	<p>An apparatus, comprising:</p> <p>a dual flush canister configured to provide both a short flush and a long flush of a toilet;</p> <p>a basket structure having a first end and a second end, the first end being configured to couple to the dual flush canister;</p> <p>a plurality of tabs extending inward toward a center axis of the basket structure, the plurality of tabs engaging a lip of an adapter flush opening of a flush valve adapter;</p> <p>a plurality of support legs extending between the first end and the second end defining a plurality of passageways from an exterior of the basket structure to the adapter flush opening; and</p> <p>the flush valve adapter further comprising:</p> <p>a flange configured to mate to a flush valve opening of a previously installed flush valve in the toilet, the flange being offset at an angle with respect to the adapter flush opening; and</p> <p>a sealing material forming a seal between the flange and the flush valve opening.</p>
17	The apparatus of claim 14, wherein the first end is coupled to the dual flush canister via a plurality of mating ears fitting within an annular groove.
19	The apparatus of claim 14, wherein the dual flush canister can be rotated with respect to the basket structure .

20	<p>An apparatus, comprising:</p> <p>a <i>dual flush canister</i> configured to provide both a short flush and a long flush of a toilet;</p> <p>a <i>basket structure</i> having a <i>first end</i> and a <i>second end</i>, the <i>first end being configured to couple to the dual flush canister</i>;</p> <p>a plurality of support legs extending between the <i>first end</i> and the <i>second end</i> defining a plurality of passageways from an exterior of the <i>basket structure</i> to a <i>flush opening</i>; and</p> <p>a <i>circular support structure configured to align the dual flush canister with the flush opening</i>, the <i>circular support structure</i> having an inner diameter greater than an outer diameter of a toilet overflow tube.</p>
21	<p>The apparatus of claim 20, wherein the <i>circular support structure</i> is mounted on the toilet overflow tube.</p>